

Annex 1
Bankruptcy Court Order

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:

ESSENTIAL.COM, INC.,

Debtor.

Chapter 11

Case No. 01-15339-WCH

ORDER AUTHORIZING SALE OF CUSTOMER BASE

THIS MATTER having come before the Court on the *Emergency Motion of the Debtor Pursuant to Section 363 of the Bankruptcy Code for an Order Authorizing: (I) Private Sale of Assets Free and Clear of Liens, Claims, and Encumbrances; (II) for the Establishment of Bidding Procedures, Including Break Up Fees and Overbid Protection and (III) For Authorization to Cease Providing Services* (the "Sale Motion") and the *Motion to Amend Debtors Emergency Motion: (I) For Authority to Sell Debtor's Assets by Private Sale Free and Clear of Liens, Claim, Encumbrances and Interests; (II) For Establishment of Bidding Procedures, Including Break Up Fees and Overbid Protection; and (III) For Authorization to Cease Providing Services* (the "Amended Sale Motion") (collectively, the "Private Sale Motions"). A hearing on the Private Sale Motions was held on August 9, 2001 (the "Sales Hearing").

NOW, THEREFORE, based upon all of the evidence, including evidence proffered or adduced at the Sales Hearing, objections and representations and argument of counsel in connection with the Sales Hearing, and offers of proof on the record, and upon the entire record of the Sales Hearing and of the chapter 11 case of Essential.com, Inc. ("Debtor"), and after due deliberation thereon, and good cause appearing therefore,

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It is hereby found, concluded, and determined that:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall later be determined to be a conclusion of law it shall be so deemed and vice versa.

B. This Court has jurisdiction to hear and determine the Private Sale Motions pursuant to 28 U.S.C. §§ 157 and 1134.

C. Venue of this case in this district is proper pursuant to 28 U.S.C. § 1408(a) and § 1409(a).

D. Determination of the Private Sale Motions is a core proceeding under 28 U.S.C. §§ 157(b) (2)(A) and (N). The statutory predicates for the relief requested herein are §§ 105 and 363 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code"), Bankruptcy Rules 2002, and 6004, and MLBR 2002-1 and 6004-1.

E. On June 29, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code") with the Bankruptcy Court. Since the Petition Date, the Debtor has continued to operate its business and manage its affairs as a debtor and debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 18, 2001, the United States Trustee appointed a creditors' committee, pursuant to Section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed.

F. The Debtor provides telecommunication services to certain individuals and small businesses ("Customer Base").

G. The Debtor entered into, subject in all respects to approval of this Court, to the certain agreements (collectively, the "Agreements") for the sale of the Customer Base and certain of the Debtor's trademarks and URL, as follows:

- (i) Asset Purchase dated July 26, 2001 (the "Zone Agreement") with Zone Telecom, Inc. ("Zone"), for the purchase and sale of certain parts of the Customer Base for \$325,000;
- (ii) Asset Purchase dated July 26, 2001 (the "Broadview Agreement") with Broadview Networks, Inc. ("Broadview"), for the purchase and sale of certain parts of the Customer Base and certain of the Debtor's tradenames, and URLs for \$475,000; and
- (iii) Asset Purchase dated July 26, 2001 (the "Essex Agreement") with Essex Communications, Inc. ("Essex"), for the purchase and sale of certain parts of the Customer Base for \$125,000;

H. On August 1, 2001, this Court entered an Order ("Sales Procedure Order") with respect to the Private Sale Motions.

I. The Private Sale Motions are for a sound business purpose, are in the best interest of the Debtor's estate, and are authorized outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code.

J. The Debtor provided fair and reasonable notice of the Private Sale Motions and the Sales Hearing to all creditors and other parties in interest and such other notice as is appropriate under the circumstances. The Notice of the Private Sale Motions provided interested bidders with notice of the Private Sale Motions and Sales Hearing and an opportunity to bid for the Customer Base.

K. An objection to the Private Sale Motions was timely filed by the Office of the Attorney General of Commonwealth of Massachusetts ("Mass. AG Objection").

L. The Debtor received qualifying counter-offers from:

(i) United Systems Access, Inc. ("USA") submitted a counteroffer for the entire Customer Base and the other assets ^{specified in USA's bid} subject to the Broadview Agreement (the "USA Entirety Bid") for \$1,100,000; and

(ii) Eastern Telephone, Inc. ("Eastern") for a certain part of the Customer base described in the Broadview Agreement for \$535,000.

M. Based upon the foregoing, and for reasons stated on the record at the Sales Hearing, this Court has determined that the best offer to purchase the Customer Base has been submitted by:

United Systems Access Inc. for \$1,300,000

N. Based upon the foregoing, and for reasons stated on the record at the Sales Hearing, this Court has determined that the second best offer to purchase the Customer Base has been submitted by:

ZONE for \$375,000
ESSEX for \$125,000
Broadview for \$735,000

O. The Private Sale Motions request that the Customer Base be sold free and clear of all liens, claims, interests and encumbrances whatsoever ("Liens"), known and unknown, including without limitation, those liens asserted against the Customer Base and noted in the Private Sale Motions, and any liens, claims, interests and encumbrances held by any of the

creditors of the within bankruptcy estate of the Debtor. A sale of the Customer Base other than free and clear of liens, claims and encumbrances would be of substantially less benefit to the bankruptcy estate.

P. At the Sales Hearing, the Debtor and the Official Committee of Unsecured Creditors recommended that the Court approve the sale of the Customer Base. All secured parties with liens on the Customer Base have either consented to or have received notice and not objected to the sale of the Customer Base, with such liens to attach to the proceeds of sale, or such parties could be compelled to accept monetary satisfaction of such lien.

Q. It is therefore in the best interests of the bankruptcy estate herein, that the Court enter this order (the "Sale Order") (i) pursuant to §§ 105(a) and 363 of the Bankruptcy Code, authorizing and directing the Debtor to sell the Customer Base to the successful bidders ("Successful Bidders"): *USA*

USA Bid. Co. B.d.

subject to such additional terms and provisions as may be set forth in the ~~Agreements including~~ *Agreements* including ~~adjustments to the Purchase Price.~~

R. The approval of the sale of the Customer Base to the Successful Bidders, and consummation of the transactions contemplated thereby are in the best interests of the Debtor, its creditors, and the bankruptcy estate. The Debtor has presented good and sufficient business justification for the sale of the Customer Base pursuant to § 363 of the Bankruptcy Code.

S. The parties represented to the Court that the offers to purchase the Customer Base by the Successful Bidders have been proposed by the Successful Bidders in good faith in

accordance with the standards of applicable law; that the Successful Bidders are not currently affiliated with either Debtor; and that the Successful Bidders are good faith Successful Bidders under § 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. The Court has heard no argument or allegation to controvert those representations. No party has alleged that any party has engaged in any conduct that would cause or permit the sale to the Successful Bidders to be avoided under § 363(n) of the Bankruptcy Code.

T. The Debtor has requested that the Court make this Order effective immediately irrespective of Bankruptcy Rule 6004(g), and good cause appears for such an action.

U. The sale and transfer of the Customer Base (1) will be a legal, valid and effective transfer of Customer Base of the bankruptcy estate of the Debtor, and (2) will vest the Successful Bidders with all right, title and interest of the bankruptcy estate in and to the Customer Base free and clear of all liens, claims, encumbrances and interests thereon.

NOW THEREFORE, it is HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The Private Sale Motions shall be, and hereby are, granted and the Agreements incorporated therein approved as being in the best interest of the Debtor's estate.

2. The Mass. AG Objection is ^{resolved with authority by a stipulation} ~~overruled in its entirety~~.

3. The Debtor is authorized and directed to consummate the transactions contemplated hereby and to sell, transfer, deliver, convey and assign the Customer Base to the Successful Bidders.

4. ^{2.3A} The Successful Bidders ^{is} ~~are~~ authorized to send any required notices to the Debtor's customers.

~~on or before five (5) business days after the date the bid is required under the applicable Agreement~~

4. It is hereby further ordered that in the event that the Successful Bidder^s fail to tender the Purchase Price to the Debtor ~~on or before five (5) business days after the date of the entry of this Order~~ ^{within the time period}, the Debtor is hereby authorized to sell the Customer Base, without further order of the Court, to the second highest bidder^s:

ZONE for \$375,000

ESSEX for \$125,000

Broadview for \$735,000

5. - ~~intentionally omitted~~

6. In the event of the failure of any of the Successful Bidder^s to close on the Agreements, the Debtor is authorized to retain any deposits provided by such Successful Bidders as liquidated damages for such failure.

7. The Debtor is authorized to pay such break up fees, as may be applicable, pursuant to the Sale Procedure Order.

8. Effective upon the Closing, title in and to the Customer Base shall automatically vest in the Successful Bidder^s free and clear of all liens, including without limitation all liens, encumbrances, claims and interests, and any liabilities including, but not limited to: (a) amounts owing with respect to the Customer Base which accrued prior to the Closing, (b) those based on theories of successor liability, de facto merger or substantial continuity, and (c) employee benefit obligations (collectively, the "Liens").

9. USA is a good faith purchaser pursuant to § 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby.

10. This Order is deemed to operate as a release of all Liens on the Customer Base as of the Closing. All holders of Liens on any of the Customer Base are hereby directed to prepare, and file promptly after the Closing, if such Liens are recorded, releases of such Liens reasonably satisfactory to the Successful Bidders.

11. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system maintained by any Recording Officer.

12. The Debtor is hereby authorized to execute and deliver such closing and other confirmatory documents and to do such things as are necessary and appropriate and as are reasonably requested by the Successful Bidder to implement and effectuate the provisions of this Order and the transactions approved hereby,

13. No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transaction contemplated by this Order. *including without limitation, entering into a management services agreement whereby Bid. of shall manage the telecommunications business. Such time as federal and State telecommunications regulatory approvals have been obtained.*

14. For good cause as established by the record in this Case, and irrespective of Bankruptcy Rule 6004(g), this Order shall be effective immediately upon entry pursuant to Bankruptcy Rule 9014 and 7062. No automatic stay of execution applies with respect to this Order.

15. This Court retains jurisdiction to:

- a. Interpret, implement and enforce the terms and provisions of this Order, any subsequent amendments to, modifications of, consents relating to, or waivers thereof or any related documents, including any escrow provisions and agreements established in connection with the transactions contemplated thereby;
- b. Protect the Successful Bidders, and the Customer Base, against any Lien;
- c. Resolve any disputes arising under or relating to the Customer Base, the Private Sale Motions and this Order; and
- d. Adjudicate all issues concerning (alleged) pre-Closing Liens on, and the proceeds of the sale of the Customer Base.

16. The provisions of the Private Sale Motions, together with the provisions of this Order, are binding on, and inure to the benefit of, the successors and assigns of the Debtor, its estate, creditors and shareholders, any trustee whether in chapter 11 or chapter 7 and any examiner with expanded powers, and receiver for the Debtor or assignee for the benefit of its

creditors, and are binding on and inure to the benefit of the successors and assigns of the Successful Bidder.

17. Any provision of this Order which is determined, construed or deemed to be a finding of fact or a conclusion of law, respectively, or a mixed finding of fact and conclusion of law, shall be as so determined, construed or deemed notwithstanding the labeling placed on such provision in this Order.

DATED THIS 9th DAY OF May, 2001.



HONORABLE WILLIAM C. HILLMAN
UNITED STATES BANKRUPTCY JUDGE

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